

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

Annual Assessment of the Status of Competition in  
the Market for the Delivery of Video Programming

)  
)  
)  
)  
)

MB Docket No. 07-269

**COMMENTS OF ROVI CORPORATION**

Adam Powers  
Vice President of Technology  
Rovi Corporation  
2830 De La Cruz Blvd  
Santa Clara, CA 95050  
apowers@rovicorp.com

June 8, 2011

## TABLE OF CONTENTS

I.	Summary.....	1
II.	Challenges Faced by OVDs .....	2
A.	MVPDs are the Predominant Internet Service providers .....	2
B.	OVDs Constitute a Large Portion of Internet Bandwidth Consumed .....	3
C.	Network Neutrality.....	3
III.	Content Availability and Licensing.....	3
IV.	Conclusion.....	5

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of

Annual Assessment of the Status of Competition in  
the Market for the Delivery of Video Programming

)  
)  
)  
)  
)

MB Docket No. 07-269

**COMMENTS OF ROVI CORPORATION**

The Commission has sought comment on the status of competition in the market for the delivery of video programming, and for the first time, seeks information regarding online video distributors (“OVDs”), recognizing the growing importance of OVDs in the marketplace.<sup>1</sup>

Recently, the Commission has concluded that OVDs are not a substitute for MPVD service *today*.<sup>2</sup> Nevertheless, this matter is timely because OVDs are in a sensitive position – rapidly expanding, but vulnerable to anti-competitive pressures from competitors.

**I. SUMMARY**

Rovi Corporation (“Rovi”), founded in 1983 as Macrovision, is an industry leading provider of digital entertainment technologies for businesses in the consumer electronic, cable and satellite and entertainment markets across the world. The company is focused on developing entertainment technology that helps consumers sort through the numerous programming options available to find television shows and movies to watch. With its acquisitions of Gemstar-TV Guide and Sonic Solutions, Rovi is a preeminent provider of entertainment content distribution and navigation technologies, entertainment information and intellectual property.

Rovi Corporation is an industry-leading provider of both consumer-facing and professional products and services world-wide. Our businesses include services and technologies such as electronic program guide products, home and professional content authoring systems, Internet content delivery services, and Internet receiver solutions.

---

<sup>1</sup> See *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 07-269, FCC 11-65 (rel. Apr. 21, 2011) (“*Further Notice*”).

<sup>2</sup> *Id.* at n.16.

With the recent acquisition of Sonic Solutions, Rovi now owns RoxioNow (formerly known as CinemaNow). At one time, CinemaNow was a stand-alone online video provider which licensed content and operated its own storefront and distribution systems. The CinemaNow brand has since been sold to BestBuy and Rovi now operates the back-end services, billing, infrastructure and content delivery as a “white label”<sup>3</sup> service for a number of retail stores, including BestBuy, Blockbuster, Sears, Warner Brothers, Lionsgate and others.

## **II. CHALLENGES FACED BY OVDs**

The Commission seeks comment on the challenges faced by OVDs.<sup>4</sup> To a great extent, the challenges to OVDs are similar to those faced by MVPDs (and other businesses) – attracting and retaining customers, acquiring rights to distribute content, and similar issues.

However, to the extent that OVDs and MVPDs compete to provide consumers’ entertainment, OVDs are in a difficult position – the infrastructure used to carry OVDs service is generally supplied by, and controlled by, the MVPDs. Maintaining the independence of this infrastructure may be a concern.

### **A. MVPDS ARE THE PREDOMINANT INTERNET SERVICE PROVIDERS**

U.S. households generally have several utility connections, generally including both telephone and cable television network connections. MVPDs are generally cable and telephone network operators as well. At least partially as a result, the large MVPDs are also the largest ISPs.

The largest seven MVPDs, excluding satellite operators that do not have a significant presence as ISPs, serve multichannel video content to more than 73 million homes.<sup>5</sup> Those seven MVPDs, in aggregate, have more than 65% market share for residential internet service.<sup>6</sup>

---

<sup>3</sup> Rovi does not sell this service directly to consumers. See white-label product, [http://en.wikipedia.org/wiki/White-label\\_product](http://en.wikipedia.org/wiki/White-label_product) (last visited June 8, 2011).

<sup>4</sup> *Further Notice* at ¶ 54.

<sup>5</sup> National Cable Telecommunications Ass’n, *Top 25 Multichannel Video Programming Distributors as of Dec. 2010*, available at <http://www.ncta.com/Stats/TopMSOs.aspx> (last visited June 7, 2011) (showing 73,656,000 basic video subscribers).]

<sup>6</sup> StatOwl, *ISP Usage and Market Share*, available at [http://www.statowl.com/network\\_isp\\_market\\_share.php?fltr\\_cn=Residential](http://www.statowl.com/network_isp_market_share.php?fltr_cn=Residential) (last visited June 7, 2011).

## **B. OVDS CONSTITUTE A LARGE PORTION OF INTERNET BANDWIDTH CONSUMED**

Recent data show that one OVD in particular, is the largest total internet traffic source, consuming nearly 25% of U.S. internet traffic at peak times, and more than 22% on average.<sup>7</sup> Furthermore, if one includes other online video sources, more than 38% of U.S. internet traffic is streaming video programming.<sup>8</sup>

## **C. NETWORK NEUTRALITY**

Because consumers' MVPD and ISP are likely to be a single service provider, there may be incentive for the largest ISPs to degrade OVD services. Aside from some rare cases, ISPs have not yet succumbed to this incentive. However, network neutrality rules with exceptions for "reasonable network management" may not prevent OVD services from being hindered. In general, network neutrality rules have not yet matured through the natural process of successive adjudication through the Commission's procedures.<sup>9</sup> Additionally, there remains the possibility that the Commission's net neutrality rules will be overturned by a court or voided by Congress.

## **III. CONTENT AVAILABILITY AND LICENSING**

The Commission seeks comment on the total amount of video programming available online.<sup>10</sup> While it is true that there is a significant amount of content currently available online via OVDs, it is also true that OVDs do not currently provide access to the amount of content available from MVPDs.

The availability of content is, and will continue to be, the primary differentiator between OVD services and traditional MVPD services, and it should be noted that in some cases MVPDs are becoming OVDs and face the same challenges and limitations as new entrants<sup>11</sup>. The studios that

---

<sup>7</sup> SANDVINE INC., GLOBAL INTERNET PHENOMENA REPORT (Spring 2011), *available at* [http://www.wired.com/images\\_blogs/epicenter/2011/05/SandvineGlobalInternetSpringReport2011.pdf](http://www.wired.com/images_blogs/epicenter/2011/05/SandvineGlobalInternetSpringReport2011.pdf), at 6.

<sup>8</sup> *Id.*

<sup>9</sup> *See In the Matter of Preserving the Open Internet, Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905 (2010) at ¶¶ 154-160, App. B.

<sup>10</sup> *Further Notice* at ¶ 55.

<sup>11</sup> Richard Lawler, *Fox asks Time Warner to stop streaming its channels to customers' iPads*, ENGADGET, March 30, 2011, *available at* <http://www.engadget.com/2011/03/30/fox-asks-time-warner-to-stop-streaming-its-channels-to-customers/> (last visited June 8, 2011).

control the availability of content are currently compensated by MVPDs in ways that OVDs cannot match in order to receive competitive content.

The Commission has previously found that vertically-integrated MVPDs will have a continuing incentive to withhold content.<sup>12</sup> Even where the Commission has acted to try to alleviate some of these concerns for OVDs, it has acted only to ensure that programming *made available online*, is made available to OVDs under similar terms and conditions.<sup>13</sup> Such requirements or conditions are good steps. However, another challenge for the competitiveness of OVDs will be the need to acquire content at substantially equivalent terms, conditions and pricing *without respect to* whether the content is “Online Video Programming,” delivered by means of the internet or otherwise.

Furthermore, the presence of an existing OVD can serve to limit the availability of content to upstart or smaller OVDs and create a barrier to entry into the market. By definition, smaller OVDs have fewer subscribers, less resources and are able to commit lower minimums than larger OVDs. As a result, where programming may be *accessible* for a large OVD (with a large customer base and willing to agree to significant minimums), current business and market conditions make it so that programming may be priced out of reach of competitive OVDs.

---

<sup>12</sup> *In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011) at ¶ 71 (concluding that the Commission cannot rely on Comcast’s assurances that it will not withhold content in an anticompetitive manner); *id.* at ¶¶ 78-86 (concluding that Comcast will have incentive and ability to discriminate against OVDs).

<sup>13</sup> *Id.* at App. A § IV.A.2.

#### **IV. CONCLUSION**

Rovi is a technology provider and believes the foregoing issues are appropriate for consideration by the Commission in developing the 14<sup>th</sup> Report.

Respectfully submitted,

Adam Powers  
Vice President of Technology  
Rovi Corporation  
2830 De La Cruz Blvd  
Santa Clara, CA 95050  
apowers@rovicorp.com

June 8, 2011